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 8 WACHOVIA BANK, N.A. AS TRUSTEE (BAYVIEW)

9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

12 WACHOVIA BANK, N.A. AS TRUSTEE
 13 (BAYVIEW), a national banking association

14 Plaintiff,

15 v.

16 JOHN CLIFTON ELSTEAD, an individual;
 17 SANDRA F. ELSTEAD, also known as
 SANDRA F. WAGNER, an individual; TITLE
 INSURANCE AND TRUST COMPANY, a
 California corporation; FIDELITY NATIONAL
 TITLE INSURANCE COMPANY, a California
 corporation; SUSAN ELSTEAD, an individual;
 LAW OFFICES OF WALKER & DURHAM, an
 entity of unknown form; THE UNITED
 STATES OF AMERICA; MBNA AMERICA
 BANK, N.A., a national banking entity;
 MEUSER COLLECTION COMPANY doing
 business as MEUSER OF CALIFORNIA, a
 California corporation; UNIVERSAL FENCES
 & SUPPLY, INC., a California corporation; THE
 CITY OF OAKLAND, a municipal entity; DOES
 1 through 100, inclusive,

25 Defendant.

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CASE NO.: CV076015 SI

Assigned to: Hon. Susan Illston

**EVIDENTIARY OBJECTIONS TO
 DECLARATION OF DEFENDANT JOHN
 CLIFTON ELSTEAD'S DECLARATION
 FILED IN SUPPORT OF MOTION TO
 DISMISS THE FIRST AMENDED
 COMPLAINT**

DATE: February 15, 2008
 TIME: 9:00 a.m.
 DEPT: "10"

1 Plaintiff Wachovia Bank N.A., as Trustee (Bayview) ("Plaintiff"), hereby submits the
2 following in objection to the Declaration of Defendant John Clifton Elstead ("Defendant" or
3 Elstead") filed in support of his Motion to Dismiss for Failure to State a Claim Upon Which Relief
4 Can be Granted as follows:

5 1 Chase objects to the entirety of paragraph 2, on the grounds that such allegations lack
6 foundation and are irrelevant pursuant to FRE §§ 401, 402, 403, 602.

7 2 Chase objects to the entirety of paragraph 3 and Exhibits 2, 3, 6 of the Declaration as
8 it and the Exhibits because they lack foundation and are irrelevant pursuant to FRE §§ 401, 402, and
9 403. In deciding a motion to dismiss for failure to state a claim, however, the court's review is
10 generally limited to the contents of the complaint. *Campanelli v. Bockrath*, 100 F.3d 1476, 1479 (9th
11 Cir. 1996). Nothing in exhibits 2, 3, 6 was alleged in the First Amended Complaint.

12 DATED: January 25, 2008

13 ADORNO YOSS ALVARADO & SMITH
A Professional Corporation

14
15 By: /s/ S. Christopher Yoo
16 JOHN M. SORICH
17 S. CHRISTOPHER YOO
18 ROCIO HERRERA
Attorneys for plaintiff
WACHOVIA BANK, N.A. AS TRUSTEE
(BAYVIEW)